



May 23, 2005

Public Notice

USCIS TO ACCEPT ADDITIONAL H-2B FILINGS FOR FY 2005 AND 2006

Washington, DC – Beginning May 25, 2005, U.S. Citizenship and Immigration Services (USCIS) will begin to accept additional petitions for H-2B workers as required by the *Save Our Small and Seasonal Businesses Act of 2005*.

WORKERS WHO BENEFIT FROM THE ACT

The Act allows USCIS to accept filings beginning May 25, 2005 for two types of H-2B workers seeking work start dates as early as immediately:

1. For FY 2005: Approximately 35,000 workers, who are new H-2B workers or who are not certified as returning workers as set forth below, seeking work start dates before October 1, 2005.
2. For FY 2005 and 2006: All “returning workers,” meaning workers who counted against the H-2B annual numerical limit of 66,000 during any one of the three fiscal years preceding the fiscal year of the requested start date. This means:
 - In a petition for a work start date before October 1, 2005 (FY 2005), the worker must have been previously approved for an H-2B work start date between October 1, 2001 and September 30, 2004.
 - In a petition for a work start date on or after October 1, 2005 (FY 2006), the worker must have been previously approved for an H-2B work start date between October 1, 2002 and September 30, 2005.
 - If a petition was approved only for “extension of stay” in H-2B status, or only for change or addition of employers or terms of employment, the worker was not counted against the numerical limit at that time and, therefore, that particular approval cannot in itself result in the worker being considered a “returning worker” in a new petition. Any worker not certified as a “returning worker” will be subject to the numerical limitation for the relevant fiscal year.

FILING REQUIREMENTS

Petition forms and processing will follow current rules, with these additional requirements for “returning workers:”

1. ***In the Petition:*** The petition must include a certification from the petitioner (employer) signed by the same person who signed the Form I-129 stating, “As a supplement to the certification made on the attached Form I-129, I further certify that the workers listed below have entered the United States in H-2B status or changed to H-2B status during one of the last three fiscal years.” The list

must set forth the full name of the worker. If the petition seeks change of status of the worker within the United States, it must include evidence of previous H-2B admissions, such as a visa or a copy of I-94 admission document.

2. **Multiple Workers:** A single petition may benefit more than one worker, including unnamed workers in “special filing situations” for business reasons. However, any returning workers must be listed in a certification as described above. For multiple named workers, including returning workers, “Attachment 1” to Form I-129 must be included and completed.
3. **After the Petition:** A petition approval notice will list any returning workers, who must be prepared to show to the U.S. consulate (when requesting an H-2B visa) or CBP port inspector (if visa exempt) proof of the worker’s previous H-2B admissions, such as a visa or a copy of I-94 admission document. The State Department will confirm prior visas through its electronic system, and that alone may be sufficient, but failure to show these documents may result in denial of visa or admission.

As usual, each petition must include a labor certification from the Department of Labor (DOL). The process for labor certification for H-2B is described on the DOL website at <http://www.ows.doleta.gov/foreign/h-2b.asp>. USCIS will accept a copy of the labor certification in those cases where the original labor certification has previously been accepted by USCIS.

Premium processing requests may be submitted by including a Form I-907 and the additional \$1,000 fee.

In addition to the normal filing fee for petitions received by USCIS on or after May 25, 2005, and seeking work start dates beginning on or after October 1, 2005 (FY 2006), each petition must include a new additional fraud prevention and detection fee of \$150. This fee is per petition, regardless of the number of workers benefiting from the petition.

NUMERICAL LIMIT CUT-OFFS

When any H-2B numerical limitation has been reached, USCIS will reject any additional H-2B petition filings that are subject to numerical limits (i.e., other than for “returning workers” and for extension of stay, change of employers or terms of employment). For FY 2006 filings, the Act provides that the numerical limit for the first 6 months of the fiscal year shall be no more than 33,000, with the remaining 33,000 H-2B numbers to be allocated on or after April 1, 2006.

The Act has allowed waiver of any requirement to issue regulations in order to implement expeditiously the provisions described above, and USCIS does not plan to supplement this Public Notice, which has been posted on the USCIS website, with any further notice in the *Federal Register*. USCIS may post other website notices, including to announce when particular numerical limits have been reached or filing procedures for the second half of FY 2006.

NEW SANCTIONS FOR MISREPRESENTATIONS

Employers should also note that the Act contains new sanctions provisions and civil monetary penalties (up to \$10,000 per violation) for failure to meet any of the H-2B petition conditions and for willful misrepresentation of a material fact. These new sanctions provisions become effective October 1, 2005.

– USCIS –

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.